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Supreme Court, U.S.
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IN THE

United States Supreme Court

KAREEM W. (ANONYMOUS),

Petitioner,

v.

MR. AND MRS. ANONYMOUS. ET AL.,

Respondents.

In the Matter of Seasia D.

On Petition For A Writ of Certiorari to the New York State Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The question presented is the following:

In light of this Court's decisions in *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), *Lehr v. Robinson*, 463 U.S. 248 (1983), *Caban v. Mohammed*, 441 U.S. 380 (1979), *Quilloin v. Walcott*, 434 U.S. 246 (1978), and *Stanley v. Illinois*, 405 U.S. 645 (1972) and the Due Process and Equal Protection Clauses, may a court deny that a biological father is a consent father and terminate his parental rights (i) despite the fact that the father, who was a minor, did everything in his power to find his child even in the face of the efforts of the birth mother and her family to prevent contact with the birth mother during her pregnancy and with his child after her birth and (ii) despite the fact that the father filed paternity and custody petitions as soon as he learned of his child's birth and within a month after the birth?

PARTIES TO THE PROCEEDING

The parties before this Court are the father petitioner Kareem W. (the "Petitioner"), the Petitioner's child Seasia D., the prospective adoptive parents Mr. and Mrs. Anonymous, the adoption agency Family Focus Adoption Services, Inc., and the biological mother Tenisha D.

CORPORATE DISCLOSURE STATEMENT

There is no publicly held company involved in this proceeding.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF AUTHORITIES	vi
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
I. Factual Background	2
II. The Memorandum Opinion of the Court of Appeals	7
REASONS FOR GRANTING THE WRIT	11
I. The Opinion of the Court of Appeals is Contrary to Clear Precedents of this Court on the Constitutional Rights of Biological Fathers	12

Page

II. The Question Presented, if Decided in the Manner that the Family Court That Tried the Case Determined and the Appellate Division of the New York State Supreme Court Affirmed in a 3-to-1 Decision, Would Protect Biological Fathers from Having Their Parental Rights Terminated Without their Consent Despite their Strong and Timely Protests in Court and their Vigorous Attempts to Find their Child and Build a Relationship with their Child. 18

III. This Case Presents an Ideal Vehicle for Resolving the Important Question Presented. 19

CONCLUSION 21

INDEX TO THE APPENDIX

Memorandum Opinion of the New York State Court of Appeals dated June 3, 2008..... 1a

Decision of the Appellate Division dated December 26, 2007 ..... 5a

Decision of Family Court dated June 30, 2006 ..... 27a

Page

United States Constitution,
Fifth Amendment 69a

United States Constitution,
Fourteenth Amendment 70a

New York State Domestic Relations Law,
Section 111(1) 71a

TABLE OF AUTHORITIES

Cases *Page(s)*

Caban v. Mohammed,
441 U.S. 380 (1979).....i, 11, 12, 13, 16

Michael H. v. Gerald D.,
491 U.S. 110 (1989).....i, 11, 12, 13

Lehr v. Robinson,
463 U.S. 248 (1983).....i, 11, 12, 13, 16, 17

Matter of Raquel Marie X.,
76 N.Y.2d 387, 559 N.E.2d 418,
559 N.Y.S.2d 855 (1990).....3, 8, 9, 11, 13,
14, 15, 16, 17, 19

Matter of Robert O. v. Russell K.,
80 N.Y.2d 254, 604 N.E.2d 99,
590 N.Y.S.2d 37 (1992).....9, 10, 14

Quilloin v. Walcott,
434 U.S. 246 (1978).....i, 11, 12, 13, 15

Santosky v. Kramer,
455 U.S. 745 (1982)..... 12

Stanley v. Illinois,
405 U.S. 645 (1972).....i, 11, 12, 13

Constitutional and Statutory Provisions including Federal and State Statutes

United States Constitution,
Fifth Amendment.....i, 2, 3, 11, 12, 13,
14, 16, 19, 20

Page(s)

United States Constitution,
Fourteenth Amendment, Section 1.....i, 2, 3,11, 12, 14, 16, 19, 20

28 U.S.C. Section 1257(a) 1,2

New York State Domestic Relations
Law Section 111(1)(e).....3, 11, 13, 14, 16

PETITION FOR WRIT OF CERTIORARI

Petitioner Kareem W. respectfully petitions this Court for a writ of certiorari to review the decision of the New York State Court of Appeals (the "Court of Appeals") styled *In the Matter of Seasia D.* and reported at 2008 WL 2239457 (N.Y.), 2008 N.Y. Slip Op. 04903, a copy of which is reproduced in the Appendix (hereinafter "App.") at 1a-4a.

OPINIONS BELOW

The Court of Appeals' decision is dated June 3, 2008. App. 4a. The Court of Appeals' decision reversed a 4-to-1 decision of the Appellate Division of the New York State Supreme Court for the Second Judicial Department decided on December 26, 2007. App. 5a. The Appellate Division's decision upheld the decision dated June 30, 2006 of the Family Court for the County of Queens, New York, the Hon. Guy P. DePhillips presiding. App. 27a. The Court of Appeals' decision is available at 2008 WL 2239457 (N.Y.), 2008 Slip Op. 04903. The Appellate Division's decision is available at 2007 NY Slip Op. 10531. The Family Court's decision is available at New York Law Journal, vol. 236, 7/31/2006 NYLJ 24 (col. 1). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

JURISDICTION

As noted above, the Court of Appeals' decision is dated June 3, 2008, and the jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The principal provisions involved are the Due Process Clause of the Fifth Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and the New York State Domestic Relations Law, Section 111(1)(e), each of which is set out in full in the Appendix to this Petition. App. 69a–73a.

STATEMENT OF THE CASE

I. Factual Background

Petitioner is the biological father of Seasia D., a newborn at the time these proceedings began. Petitioner was at all relevant times a minor. Petitioner's paternity of Seasia was established by order of the Family Court and not questioned by the Appellate Division or the Court of Appeals. App. 28a-29a. Constitutional issues were raised in this case in timely fashion and are reflected in all of the decisions from Family Court through the Court of Appeals. *E.g.*, App. 3a, 17a, 59a.

This matter came before the Family Court on the Petitioner's petitions for paternity and custody of his daughter Seasia that were filed 22 days after Seasia's birth. App. 28a-29a. Over seven months later, Mr. and Mrs. Anonymous filed a petition with that court to adopt Seasia. App. 27a. Petitioner opposed that adoption on the grounds of his paternity, of his refusal to consent to the termination of his parental rights, and the active and immediate steps he had taken to establish her whereabouts and to attempt to build a relationship with her notwithstanding the efforts of the birth mother and her family to prevent contact. As a result of his clear paternity, his vigorous attempts to seek his daughter and build a relationship, and his refusal to consent to the child's adoption, Petitioner urged that the adoption petition should be denied.

The Family Court judge, Guy P. DePhillips, who was at the time of the proceedings in question the Chief Administrative Judge for that court and is now on senior status, determined on a thorough review of the facts after a full evidentiary hearing that Petitioner was, in the terminology of Family Court, a "consent father." A consent father means one whose consent to the adoption is necessary under due process and equal protection requirements read into New York State Domestic Relations Law Section 111(1)(e) under this Court's decisions listed above and the Court of Appeals' decisions thereafter in *Matter of Raquel Marie X*, 76 N.Y.2d 387, 559 N.E.2d 418, 559 N.Y.S.2d 855

(1990), and *Matter of Robert O. v. Russell K.*, 80 N.Y.2d 254, 604 N.E.2d 99, 590 N.Y.S.2d 37 (1992). Based on that determination, Judge DePhillips denied the adoption petition.

The decision of Family Court was appealed to the Appellate Division of the Supreme Court for the Second Department. In a 3-to-1 decision, that court upheld the Family Court's decision. It did so in a carefully reasoned decision that reviewed the facts in detail and found that the standards by which courts properly judge whether a biological father should be considered a consent father were met.

The standards employed by both courts looked to the biological father's attempts to find his child and the child's biological mother despite the mother's and her family's attempts to hide the child from him, the biological father's constant reiteration of his parental status and rights, and his timely court actions to vindicate those rights. Petitioner was found to meet those standards by both the Family Court and the Appellate Division.

Petitioner's steps included this action and his establishment of his paternity. As the Appellate Division stated, "The biological father promptly commenced a paternity proceeding and a custody proceeding less than one month after the child's birth." App. 13a. Moreover as it further stated, "[s]ince the birth mother's medical expenses were paid by Medicaid, the biological father's failure to contribute to those expenses is thus not determinative." App. 13a (citation omitted). Petitioner made repeated efforts to visit with his daughter when he

was able to identify her whereabouts, but those efforts were thwarted by the birth mother and her family. Concerning Petitioner's relocation to Maryland, the Appellate Division concluded, as had the Family Court, that

> "... the relocation of the biological father's family to Maryland on January 30, 2004, during the birth mother's pregnancy, cannot be deemed to constitute a waiver. The birth mother's family knew about the planned move before they knew about the birth mother's pregnancy. The biological father and the paternal grandmother discussed the move with the birth mother's family and left their forwarding address, the addresses and telephone numbers of other close relations in both Maryland and New York, and the paternal grandmother's mobile telephone number. ... The birth mother confirmed that she received the information. ... The attempts to reach the birth mother's family by telephone continued after the move to Maryland, to no avail." App. 13a-14a.

Throughout this period, Petitioner was a minor. He maintained his adamant insistence that he would not relinquish his parental rights and immediately addressed the issues of paternity and custody of his daughter in proceedings which vindicated his rights and his position through two court decisions.

The conception of Seasia occurred in one consensual encounter between Petitioner and Seasia's birth mother in the church they both attended.

App. 40a. Petitioner has consistently asserted from the very start of his knowledge of the pregnancy that he has viewed his responsibilities attending his fatherhood very seriously and that he loves his child and wants to care for her. He has consistently and vehemently reiterated that he has not and would never consent to the termination of his parental rights and has taken vigorous steps in court to maintain, protect and vindicate his parental rights as explained above, including filing actions for paternity and custody within a month of his daughter's birth. The Family Court judge found the Petitioner "generally credible" but the birth mother "of more limited credibility." App. 39a. The Family Court decision states that

> "The record clearly demonstrates a course of action on the part of Kareem W. [the Petitioner herein] and his mother Karen S. to maintain contact with the birth mother subsequent to the...meeting of the two families [over four months before the birth of Seasia] and the calculated endeavor on the part of Tenisha D.'s [the birth mother's] adoptive mother aided by Ann K. and her husband to frustrate that endeavor. . . ." App. 46a.

While the birth mother surrendered Seasia for adoption shortly after her birth, the Family Court found that "With respect to the extrajudicial surrender it is not disputed that the infant birth mother, fourteen years old, signed the unconditional surrender without the benefit of legal advice from an attorney." App. 49a. The Family Court noted

that it found something fundamentally wrong with a jurisprudence that requires adult representation for an infant girl seeking to contract away her doll, but not her baby. App. 52a.

The Family Court decision concludes,

> "Under the clear circumstances delineated in the record of the proceedings before this court, Kareem W. has manifestly demonstrated his willingness to assume full custody of the child and has done so promptly under circumstances where there has been a concerted endeavor to frustrate his efforts and to intimidate him in his endeavor to avail himself of the opportunity to demonstrate that he is willing and able to enter into the fullest possible relationship with his child. . . . The court holds that the credible testimony and evidence demonstrates that his consent is required. . . . Accordingly the instant adoption petition is dismissed because the extrajudicial surrender of the infant birth mother is invalid and because the teenage birth father's consent to the adoption is required and he is not consenting, but is requesting custody of his daughter." App. 61a, 63a, 67a.

II. The Memorandum Opinion of the Court of Appeals

Notwithstanding the detailed record below to support both lower court decisions, the Court of Appeals issued an extremely brief memorandum decision in which it addressed no constitutional

issues presented by this case and gave short shrift to the extensive factual record developed in the Family Court proceedings that included testimony as to which the experienced Family Court Judge could and did assess credibility firsthand.

Instead, the Court of Appeals focused solely on a brief recitation of what it considered the inadequate steps taken by Petitioner to evidence concern and care for his daughter. In so doing, the court ignored substantial evidence adduced at trial and contained in the Family Court decision which was summarized and reiterated in the Appellate Division decision. Ironically, the Court of Appeals also ignored its own judicially created standard for establishing when a biological father is a consent father.

These principles were articulated by the Court of Appeals in *Raquel Marie X.*, 76 N.Y.2d 387 (1990), where it declared unconstitutional the provision of the applicable New York State statute that required that an unwed father live openly "with the child or the child's mother for a continuous period of six months immediately preceding the placement of the child for adoption." New York State Domestic Relations Law Section 111(1)(e) App. 72a-73a. It found that the father in one of the two cases considered together in *Raquel Marie X.* had failed to meet the requirements of this provision even though he had done "everything possible to manifest and establish his parental responsibility." *Id.* at 409. His failure was due to the concerted action of the mother and the adopting parents to frustrate

his efforts. Under those circumstances, the Court of Appeals held that "a father who has promptly taken every available avenue to demonstrate that he is willing and able to enter into the fullest possible relationship with his under-six-month old child should have an equally fully protected interest in preventing termination of the relationship by strangers, even if he has not yet actually been able to form that relationship." *Id.* at 403. The legislature failed thereafter to amend the statute to address this issue, a fact that the courts that have rendered decisions in this case have noted with dismay.

The Court of Appeals reconfirmed its approach to Section 111(1)(e) as articulated in *Raquel Marie X.* in *Robert O. v. Russell K.*, 80 N.Y.2d 254 (1992). In that case, the Court of Appeals found, in denying the biological father's petition, that "petitioner failed to take any steps to discover the pregnancy or birth of the child before first asserting his parental interest 10 months after the adoption became final. . . . His inaction, however regrettable and with whatever unfortunate consequences, was solely attributable to him." 80 N.Y.2d at 259, 265. Describing its decision of two years before in *Raquel Marie X.*, the Court of Appeals stated,

> "We struck down that section [Domestic Relations Law Section 111(1)(e)] as unconstitutional in *Matter of Raquel Marie X.* . . . because the provision of section 111(1)(e) that premised the father's right to consent on his living with the mother was not sufficiently related to the State's legitimate interest in the quality of the

> relationship between the father and the child and *it allowed the mother to block a willing father's attempt to assert his parental rights.*" 80 N.Y.2d at 261 n.1 (emphasis added).

Later in its decision in *Robert O. v. Russell K.*, the Court of Appeals states, "We made clear in our decision in *Raquel Marie* that the timing of the father's actions is the 'most significant' element in determining whether an unwed father has created a liberty interest." *Id.* 264 (citation omitted).

Petitioner herein took all of the steps available to him to meet those standards both before and after his daughter's birth, as the Family Court and the Appellate Division found, and he did so in the face of repeated blocking and concealing actions by the birth mother and her family; moreover, he did so not just with petitions for paternity and custody filed within six months after his child's birth, as contemplated in Section 111(1)(e), but with petitions filed less than one month after her birth.

The Court of Appeals' reversal of the well-reasoned and detailed lower court decisions defeats the wise exercise of judicial oversight based on a full review of the facts guided by fundamental constitutional principles, and it does so with a memorandum decision which barely scratches the surface of both factual and legal analysis of this case. This is a decision that cries out for the highest review on a matter that affects one of the most central of all human relationships that is at the bedrock of family: parenthood and the intimate bond between parent and child.

REASONS FOR GRANTING THE WRIT

The Court should grant the petition for these basic reasons:

First, the question presented is of exceptional importance for its effect on preserving families and the rights of parents to one of the most foundational of all interpersonal relationships—the relationship between parent and child.

Second, the question presented has been addressed by this Court in no fewer that five decisions in the past thirty-six years but has not been addressed again for almost two decades. *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), *Lehr v. Robinson*, 463 U.S. 248 (1983), *Caban v. Mohammed*, 441 U.S. 380 (1979), *Quilloin v. Walcott*, 434 U.S. 246 (1978), *Stanley v. Illinois*, 405 U.S. 645 (1972). It is clear that the Court of Appeals failed to apply the standards of this Court's decisions to the facts of this case even though it had carefully analyzed this Court's decisions in its lengthy earlier decision in *Raquel Marie X.* in which it found the provision of the applicable statute to be unconstitutional.

Third, as this Court has underscored in its decisions in this area cited above, the matters at issue when the rights of a biological father are being considered are of constitutional proportion under both the Equal Protection and the Due Process Clauses. The New York State statute at issue here has been attacked by this Court and by the Court of Appeals in *Raquel Marie X.* on constitutional grounds yet has not been amended to address those issues. The

issues raised by this statute as it addresses the rights of a biological father are of constitutional proportion, as both this Court and the Court of Appeals have confirmed.

I. The Opinion of the Court of Appeals is Contrary to Clear Precedents of this Court on the Constitutional Rights of Biological Fathers.

Petitioner respectfully submits that the memorandum decision of the Court of Appeals is contrary to the principles of law recognized in the decisions of this Court in *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), *Lehr v. Robinson*, 463 U.S. 248 (1983), *Caban v. Mohammed*, 441 U.S. 380 (1979), *Quilloin v. Walcott*, 434 U.S. 246 (1978), and *Stanley v. Illinois*, 405 U.S. 645 (1972). It has been a consistent principle throughout all of these decisions that biological fathers are entitled to equal protection and due process when they act promptly to establish their paternity and to contest the termination of their parental rights especially within the first six months after their child's birth. The issues at stake here are vital ones to the interests of parents and their children and hence critical ones for family law and our family courts nationwide.

This Court has held that the rights of a parent are of paramount importance in this Court's landmark decision on due process with respect to termination of parental rights. *Santosky v. Kramer*, 455 U.S. 745 (1982). This Court has further held that the termination of the parent-child relation-

ship without due process and without careful consideration of the strong interest of both the parent and the child in that relationship as well as the resulting societal interest in preserving that relationship if possible is not to be countenanced in *Michael H.*, *Lehr*, *Caban*, *Quilloin*, and *Stanley*.

It is undisputed that the central provision of New York State law applicable to this action is Section 111(1)(e) of the Domestic Relations Law which provides as follows:

> " 1. Subject to the limitations hereinafter set forth consent to adoption shall be required as follows: . . .
>
> (e) Of the father, whether adult or infant, of a child born out-of-wedlock who is under the age of six months at the time he is placed for adoption, but only if: (i) such father openly lived with the child or the child's mother for a continuous period of six months immediately preceding the placement of the child for adoption; and (ii) such father openly held himself out to be the father of such child during such period; and (iii) such father paid a fair and reasonable sum, in accordance with his means, for the medical, hospital and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child." App. 71a-73a.

In holding this statute unconstitutional in *Raquel Marie X.* based on the principles repeatedly enunciated by this Court, the Court of Appeals effectively recrafted the statutory requirements to

do justice in the circumstances under constitutional standards; yet the Court of Appeals has failed to follow here what it itself has found to be that constitutional mandate based upon the decisions of this Court.

Thus, it is particularly ironical in light of its decision here to read the Court of Appeals own prior description of the precedents of this Court and their application to determining the constitutionality of Section 111(1)(e). For example, the Court of Appeals stated in *Raquel Marie X.*,

> "The unwed father's right is decidedly limited in duration. Nonetheless, a father who has promptly taken every available action to demonstrate that he is willing and able to enter into the fullest possible relationship with his under-six-month-old child should have an equally fully protected interest in preventing termination of the relationship by strangers, even if he has not as yet actually been able to form that relationship [a relationship directly with the child]." 76 N.Y.2d at 403.

Two years later, in *Robert O. v. Russell K.*, 80 N.Y.2d 254, the Court of Appeals again acknowledged that "The Supreme Court, beginning with *Stanley v. Illinois* has recognized that some unwed fathers, by their conduct in relation to their children, enjoy parental rights protected by the Federal Constitution." *Id.* at 261-62 (citations omitted). Summarizing the facts in one of the two cases joined in *Raquel Marie X. (Baby Girl S.)* and speaking of the actions of the biological father there, the

Court of Appeals in *Robert O. v. Russell K.* also said, "His failure to meet the statutory requirements promptly was due not to his own failings but to the concerted actions of the mother and the adopting parents to frustrate his efforts." *Id.* at 263. That is exactly the kind of conduct by the birth mother and her family that Petitioner faced in the instant action, yet even in the face of it he was able to file actions for paternity and custody within a month of his daughter's birth and to pursue them vigorously even as the birth mother and her family tried to hide and otherwise keep his daughter from him.

In *Raquel Marie X.*, the Court of Appeals summarized this Court's holding in *Quilloin* in this way:

> "While Quilloin's name appeared on the birth certificate, he never had custody, or regularly supported or visited the child, nor did he attempt to legitimate him until receiving notice of the proposed adoption.... Noting its long recognition that the relationship between parent and child is a constitutionally protected one, the court stated that it had little doubt that the Due Process Clause would be offended if the State were to attempt to break up a biological family over the objection of the parents and children solely in the perceived best interests of the children. However, it found no violation in view of Quilloin's failure to have or seek custody of his [eleven-year-old] son, where the result of the adoption would be to give legal

recognition to an existing family unit." 76 N.Y.2d at 398.

In the *Caban* case, this Court struck down on equal protection grounds the differential treatment of unwed mothers and unwed fathers under the then-applicable New York State Domestic Relations Law provision. The New York State legislature responded by amendment to Domestic Relations Law, Section 111(1)(e) which, in the words of the Court of Appeals in *Raquel Marie X*, was designed to provide unwed fathers "with a veto right only in specified circumstances which in its view objectively and unambiguously manifested that, through his efforts, there was a substantial, continuous, meaningful family relationship available to the child." *Id.* at 399. The test differed for an over-six-month and under-six-month aged child. (Sections 111(1)(d) and (e), App. 71a-72a.) The Court of Appeals itself noted in *Raquel Marie X* that no statutory exception was made "for prevention of the father's efforts to satisfy statutory requirements, by the person having custody of the child." *Id.*

In *Lehr*, this Court found that in two years, the biological father had done nothing to try to form a relationship with his child and so rejected the father's claim of violation of his due process rights. However, as this Court also observed in that case, the biological link "offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of

responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development." 463 U.S. at 262.

In the instant case, Petitioner made those efforts to the best of his ability given the steps taken by the birth mother and her family to prevent him from even finding where his child was located. This case provides this Court with the opportunity to affirmatively apply its holding in *Lehr* to a situation in which the father has aggressively asserted his paternity and desire for custody of his child in court from the time of his child's birth and has tried to form a relationship with his child even though his efforts have been frustrated at every turn by those who did not want him to be able to form that relationship. That relationship is one which this Court in *Lehr* found enables the biological father to "make uniquely valuable contributions to the child's development." *Id.*

The Court of Appeals itself in *Raquel Marie X.* summarized this Court's line of cases in this way,

> ". . . the interest of unwed fathers in a relationship with their children has gained significant recognition in the law and the dimensions of that interest are now well defined. The protected interest is not established simply by biology. The unwed father's protected interest requires both a biological connection and full parental responsibility; he must both be a father and behave like one. *When an unwed father promptly commits himself to custody—*

signifying 'provision for the physical and emotional needs of children, provision of guidance and direction to children, and living with children on a day-to-day basis'—in adoption proceedings by strangers he is entitled to the constitutional due process and equal protection guarantees accorded other parents before his rights are terminated." *Id.* at 401 (citations omitted; emphasis added).

That is exactly the prompt commitment Petitioner here made in all of the ways available to him, as the Appellate Division and Family Court found.

II. The Question Presented, if Decided in the Manner that the Family Court That Tried the Case Determined and the Appellate Division of the New York State Supreme Court Affirmed in a 3-to-1 Decision, Would Protect Biological Fathers from Having Their Parental Rights Terminated Without their Consent Despite their Strong and Timely Protests in Court and their Vigorous Attempts to Find their Child and Build a Relationship with their Child.

The practical result of the Court of Appeals' decision in this case is to leave biological fathers in New York State without constitutional protection despite their strong and timely protests in court and their vigorous attempts to find their child and build a relationship with him or her. That is absolutely contrary to the decisions of this Court on the issues of

constitutional magnitude presented by termination of parental rights.

Petitioner took the steps that this Court and the Court of Appeals in prior decisions have laid out for him, yet his position was summarily dismissed by the Court of Appeals. He took those steps in all of the ways available to him and despite the daunting obstacles thrown in his path by the birth mother and her family. He has shown his commitment to raising his child, and this Court's decisions clearly demonstrate that his due process and equal protection rights were offended by the memorandum opinion of the Court of Appeals reversing the decision of the Appellate Division which relied upon and followed the decision of the Family Court judge who heard the evidence and the witnesses first-hand.

III. This Case Presents an Ideal Vehicle for Resolving the Important Question Presented.

As noted above, this Court has found that biological fathers have due process and equal protection rights that protect them against termination of their parental rights without their consent. The New York State Court of Appeals almost two decades ago acknowledged that line of this Court's precedent in its detailed decision in *Raquel Marie X.* Yet in the instant action, the Court of Appeals disregarded those decisions is reaching its result and in fact gave almost no explanation for the decision it rendered notwithstanding the fully

developed record below and the detailed analysis found in both the Family Court and the Appellate Division decisions.

Those two courts found that the facts here compel the conclusion that the Petitioner was the consent father of Seasia, that he had acted entirely appropriately in making his status and his refusal to consent known from the outset, that he had acted vigorously in the ways possible to him to find his child and to attempt to build a relationship with her in light of the acts of the birth mother and her family to hide and otherwise keep the child from him, and that his due process and equal protection rights would be violated if he was not recognized to be a consent father and his parental status was terminated.

This factual record provides an ideal vehicle for addressing the subject of the rights of a biological father to preserve his parental status. What steps should it be necessary for a biological father to take to protect himself against termination of his parental rights in a situation in which the birth mother and her family does all in their power to prevent him from finding his child and attempting to build a relationship with her?

CONCLUSION

The petition should be granted.

Respectfully submitted,

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August 29th, 2008

CERTIFICATION

As required by Supreme Court Rule 33.1(h), I certify that the document contains 4,645 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 29, 2008.

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